UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

UNIFIRST CORPORATION

And

Case Nos. 1-CA-39267
1-CA-39321

LAUNDRY WORKERS UNION LOCAL 66L,
A/W UNION OF NEEDLETRADES, INDUSTRIAL &
TEXTILE EMPLOYEES, AFL-CIO, CLC

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Of Boston, Massachusetts
For the General Counsel

Daniel W. Bates, Esq., and
Peter R. Kraft, Esq.,
Of Portland, Maine
For the Respondent

DECISION

Statement of the Case

WALLACE H. NATIONS, Administrative Law Judge. This case was tried in Northampton, Massachusetts on April 29 and 30 and May 1 and 9, 2002.[1] The charge in Case No. 1-CA-39267 was filed by Laundry Workers Union Local 66L, a/w Union of Needletrades, Industrial & Textile Employees, AFL-CIO, CLC, (Union) on August 2, 2001 and it filed amended charges in this Case on September 13 and 21, 2001. The charge in Case No. 1-CA-39321 was filed by the Union on August 30, 2001. An Order Consolidating Cases, Consolidated Complaint and Notice of Hearing (Complaint) was issued March 20, 2002. The Complaint alleges that UniFirst Corporation (Unifirst or Respondent) has engaged in certain conduct in violation of Section 8(a)(1) and (5) of the Act. Respondent has admitted certain allegations of the Complaint, including the jurisdictional allegations, but has denied committing any of the alleged unfair labor practices.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

Findings of Fact

I. Jurisdiction

[1] All dates are in 2001 unless otherwise noted.

The Respondent, a corporation, provides commercial laundry services at its facility in Indian Orchard, Massachusetts. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

The Complaint alleges and Respondent admits that Mark Breault is its Production Manager, Steven Harr is its General Manager and that William Coe is its Director of Human Resources and that each is a supervisor and agent within the meaning of the Act. The Complaint alleges that employee Maria Fatima Rebelo has acted as a translator for Respondent and is an agent of Respondent within the meaning of the Act. Respondent admits that Rebelo has acted as a translator, but denies that she is an agent within the meaning of the Act.

A. An Overview of the Case

The alleged unfair labor practices took place during an effort to decertify UNITE as the bargaining representative for the approximately 67 production employees at UniFirst's Indian Orchard, Massachusetts (Springfield) facility. The effort to decertify the Union was initiated by an employee, Mary Holmes, who filed a decertification petition with the Board on July 9. An election was scheduled by the Regional Director for August 16, but was blocked by the unfair labor practice charges filed by the Union on August 2.

During July, Respondent's General Manager Harr, organized and conducted at least two and as many as five employee meetings in his office, the result of which was the establishment of a "committee" which solicited questions from employees pertaining to the decertification issue. It is alleged that during these meetings, Harr encouraged the members to solicit certain employees for the committee and to solicit questions. In addition, employees were asked to sign a petition allegedly announcing their support of the Respondent.

During the first week of August, Respondent held three meetings with employees at which it allegedly unlawfully promised improved benefits to employees if they voted the Union out. It shortly thereafter announced to employees that the election had been postponed because of the charges filed by the Union. A disgruntled member of the committee then gathered forty employee signatures on a petition requesting that Respondent hold an election to vote out the Union. On August 31, acting on the petition, Respondent conducted a poll of employees at the Springfield facility, and as a result of that poll, withdrew recognition from the Union. Based on the withdrawal, Respondent has refused to provide the Union with necessary and relevant information the Union requested prior to the withdrawal of recognition and has refused to bargain with the Union.

The Complaint alleges that Respondent has violated the Act by:

1. On or about July 16, and in or about early August, at the Indian Orchard facility, telling employees that if the Union were voted out, the anti-union employee committee at the facility would represent employees.

2. On or about August 2 and 3, by Coe, Breault, Harr and Rebelo, at the Indian Orchard facility, promising employees better wages and benefits, including insurance, profit sharing and 401(k), if they voted the Union out.

3. On or about August 2 and 3, at the Indian Orchard facility, by Harr, Coe, Breault and Rebelo, telling employees they could not have profit sharing and 401(k) with the Union.

4. On or about August 2 or 3, by Harr at the Indian Orchard facility, interrogating employees about their union sympathies and/or promising employees better benefits without a union.

5. In or about July or August, by Coe at the Indian Orchard facility, promising employees an improved anti-union employee committee if they voted the Union out.

6. On about August 2 and 3, at the Indian Orchard facility, in written materials distributed to employees, promising its employees better wages and benefits if they voted the Union out.

7. On or about August 31, at the Indian Orchard facility, interrogating and polling its employees in the Union described below in paragraph 8 about their union sympathies.

8. The Complaint alleges that the following employees of Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production employees of Respondent described in a collective-bargaining agreement between Respondent and the Union, effective by its terms from October 5, 1998 through October 1, 2001 (herein the 1998-2001 Contract).

9. It further alleges that at all material times, the Union has been the designated collective bargaining representative of the Unit and at all material times until August 27, the Union has been recognized as such by the Respondent. This recognition has been embodied in successive collective bargaining agreements, the most recent of which is the 1998-2001 Contract.

10. The Complaint further alleges that at all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective bargaining representative of the Unit.

11. On August 26, and September 4, The Respondent withdrew its recognition of the Union as the exlusive collective bargaining representative of the Unit.

12. Since August 27, Respondent has refused to meet and bargain with the Union as the exclusive collective bargaining representative of the Unit.

13. Since about July 16, the Union, by letter from its attorney, has requested Respondent furnish the Union with certain information necessary for and relevant to the Union's performance of its duties as the exclusive collective bargaining representative of the Unit.

14. Since about July 16 and August 17, the Respondent has failed and refused to furnish the Union with the information requested by the Union.

Based on the Complaint and the evidenced adduced at hearing, the issues presented for

determination are whether Respondent violated Section 8(a)(1) of the Act by:

1. through its General Manager Harr, by suggesting which employees should be asked to attend "committee" meetings and by sending a member of management to summon the UniTech shop stewards to a meeting?[2]

2. through Harr, by soliciting employee signatures on a membership list of the committee?

3. through Harr and Respondent's Human Resource Manager William Coe, by the statements they made during various meetings in July and on August 2, 3, and 28?

Whether Respondent violated Section 8(a)(5) of the Act by:

1. refusing to bargain with the Union by canceling the bargaining session on August 28, relying on a miscommunication, and by continuing to rely on the miscommunication on August 24, in correspondence with the Union which fails to mention the decision to conduct a poll, which had already been made?

2. conducting a secret ballot poll of employees' support for the Union at a time when unfair labor practices were pending.

3. relying on the results of the August 31 poll in order to withdraw recognition of the Union and to continue to refuse to provide requested information and to bargain with the Union.

B. Fact Findings

1. Events Leading to the Filing of the Decertification Petition

UniFirst operates a commercial laundry facility at Indian Orchard, Massachusetts, which will be referred to as its Springfield facility. The employees at this facility were represented since the 1950's by Laundry Workers Local 66 until early in 2001, when the Laundry Workers merged with UNITE, which continued to represent the same employees. The Union represents two units at the Springfield facility. The larger unit is comprised of approximately 40-50 UniFirst production employees who launder industrial uniforms. The smaller unit is comprised of UniTech production employees, who launder garments worn in nuclear facilities. UniTech is a subsidiary of UniFirst. The two operations are located within the same building, but are separated due to the nature of the UniTech work. The two units share the same cafeteria and parking lot. The most recent contract between the Union and Respondent had a three-year term from October 5, 1998 through October 1, 2001.

Both Union Business Agent Sean Munzert and Respondent's General Manager Steven Harr testified that the relationship between the Union and Respondent had been non-confrontational and that access to the facility not a problem for the Union. There had been an unsuccessful decertification attempt at the Springfield facility in 1992.

In December 2000, or January 2001, the Union sought a mid-contract change relating to the pension fund. As a result of the merger between the two Unions, UNITE's pension fund was

[2] As will be discussed later, UniTech is a subsidiary of UniFirst.

over-funded. The Union wanted to direct part of the pension contributions to its health and welfare fund, which needed the money. The Respondent contributed $38 a month per employee to the pension plan and the Union wanted the Respondent to shift $37 of this amount into the health and welfare fund. Munzert testified that the situation involved many companies and that the redirection of contributions was solicited at other plants represented by UNITE. He also testified that redirection of the funds would increase the employees health benefits without harming their pension benefits.

The parties discussed the Union's proposal and Respondent decided to decline to make the mid-contract change and notified the Union of this decision in a letter dated February 5. Respondent's witnesses testified that the Company feared future liability if UNITE's pension fund subsequently became under funded. The Respondent suggested that the Union bring the matter up again in negotiations for a new contract.

After receiving this rejection, the Union prepared a leaflet critical of the Company's decision in this regard and distributed it to employees in March. The leaflet fails to state that the company would have shifted the payment of the $37 from one fund to another. General Manager Harr became angry over this leaflet and after consulting with Respondent's Counsel, Peter Kraft, met with Unit employees. At this meeting, he pointed out to employees the proposed shift in contributions from one fund to the other, apparently leaving the impression that the pension fund would somehow suffer. According to Harr, following the meeting, he and other managers heard from employees that they were unhappy with the Union for not telling them about the transfer of funds. Two Union stewards, Edwin Guerra and Olga Centeno were particularly disappointed.

Some of the disappointed employees, led by employee Mary Holmes, a six-year production worker, filed a decertification petition with the NLRB on July 9, 2001. Holmes sworn affidavit was introduced in evidence without objection. In it, she states that she prepared the petition at home, showed the blank petition to Respondent's production manager, got his approval of the document, and circulated the petition at the plant during working hours with his permission.

2. An employee "committee is formed and meets with Harr.

Harr testified that he heard rumors about employees circulating a petition to decertify the Union and that he contacted William Coe, Respondent's Director of Human Resources. Coe told Harr that Harr could not get involved in the decertification effort. Subsequently, sometime between July 7 and July 9, Harr received a copy of the decertification petition from steward Olga Centeno. Harr faxed a copy of the petition to Kraft and Coe. Shortly thereafter, in a phone conversation, Coe explained to Harr what he could do and could not do using the acronyms TIPS and FOE.[3]

Shortly thereafter, Harr was approached at the plant by employees, Holmes, Dorothy Depaolo and Centeno, who asked for a meeting. He did meet with them in his office. The employees asked him questions about the decertification process and what would happen in the event of decertification. Harr declined to answer; instead he asked that their questions be put in writing so they could be answered in an orderly fashion. He also suggested that since all three were in the UniFirst unit, they make the decertification petition known to the UniTech unit employees.

[3] TIPS stands for cannot Threaten, Interrogate, Promise or Spy, and FOE stands for [employer] can give Facts, Opinions and Evidence during conversations with employees.

According to Harr, he met again with employees in his office a few days after the first meeting. This was in mid-July. At some point, these employees who were generally the employees actively supporting decertification became known as the "committee." At this second meeting, in addition to the three employees involved in the first meeting, employees Katherine Dewberry, Julio and Candy Abrew and Maria Fatima Rebelo, and UniTech shop stewards Claudio Camacho and Jeanette Boily were in attendance.

Holmes affidavit states that before this meeting Production Manager Breault went around to all members of the committee and called them together for the meeting in Harr's office. It is not clear on the record who called the meeting, Harr or one or more of the committee members. Holmes stated that Harr spoke at the meeting and told the employees that the purpose of the committee was to keep the employees informed about what was going on. According to Holmes, the committee was told their role was "to let the people know that we were there to give UniFirst a chance to show what we could get if we were non-Union." Harr told them that if employees had questions, they could give them to the committee and it would give them to Harr to answer. Holmes also stated that Harr had prepared a document that he asked the employees to sign. The document said that we were organized to help the employees understand what could be offered them in a possible change over.

Depaolo was also at the second meeting and testified that she recalled Harr telling the committee to go out and tell employees that if they had any questions they should come to the committee or to him. She did not recall being asked to sign a document at the meeting.

Maria Fatima Rebelo, a UniFirst employee who later acted as a translator for Respondent, testified that she was also a member of the committee who met in Harr's office. She testified that the committee was formed to ask Harr and Breault what benefits the employees would receive without a union. Rebelo stated that Harr emphasized that he could make no promises.

Steward Claudio Camacho testified that he was asked to attend a meeting of the committee on July 16. He was invited evidently in response to his query to Edwin Guerra, a committee member and shop steward, as to why he and the other UniTech steward were not being asked to the meetings. According to Camacho, he was approached at his workstation by Breault and asked to come to Harr's office. Camacho testified that at the meeting, Harr asked the employees to sign a petition that said, "I am in agreement that the company form a committee for the purpose of communicating what the employer was talking about – also, for the purpose of if we had any questions they could ask the committee and the committee would communicate to the company." Camacho declined to sign it. According to Camacho, Harr also said that the committee would represent the workers in the capacity of a union if the union left.

General Manager Harr testified that this meeting took place, but denies that he asked anyone to sign any document and denies ever stating to a group of employees that the committee would take the place of the union if it were to be decertified.

Based on the testimony of several witnesses, Harr held another meeting with an unspecified number of employees on or about July 19. UniFirst employee Ulisis Torres testified that he attended such a meeting and that the main issues discussed were 401(K) and profit sharing. Torres testified that at this meeting, Harr told the employees that if the Union were voted out, the employees would be able to get profit sharing and a 401(K) plan. He also testified that an employee asked if the employees could have the plan that Respondent was offering with the Union still in place. According to Torres, Harr said, "No." According to Torres, Harr also

instructed employees to write down their questions and give them to him, Breault, Guerro or Centeno.

Employees Denys Camacho and Carmen Sanchez, both UniFirst employees, testified that a meeting for all employees occurred in mid-July. Camacho testified that at this meeting, Harr told employees about the committee. According to her, Harr stated that this group of people would represent the workers in case the Union did not exist anymore – that it would be like forming a union inside the company.

Harr testified that he held a meeting for employees on July 19 to announce the election date set by the NLRB on the decertification petition and to discuss the process. I really believe that Torres has mixed up meetings in his mind and that the one his testimony primarily relates to took place on either August 2nd or 3rd. The topics of the 401(k) and profits sharing place were a major part of these meetings and testimony similar to that given by Torres was given by several witnesses attending these meetings. I do not credit the testimony of Denys Camacho and her husband, Claudio, that in two separate meetings, Harr stated that the committee would represent the employees or that the committee would be like a union in the company. They are the only witnesses making this allegation even though a number of witnesses that testified or whose affidavits were place in evidence attended these meetings. Harr denies making such statements and I find him more credible than the Camachos.

3. Respondent holds three employee meetings to explain its non-union benefits.

General Manager Harr and Human Resources Director Coe held three employee meetings on August 2 and 3. One meeting was conducted in Portuguese, one in Spanish and one in English. The same presentation was made at each meeting. Harr and Coe do not speak either Portuguese or Spanish, and they relied on employees to translate for them during their presentations to Portuguese and Spanish – speaking employees. Coe testified that the Company used certified translators for written translations and that all oral translations are done by employees. Maria Fatima Rebelo translated for the meeting conducted in Portuguese and Olga Centeno translated for the meeting conducted in Spanish.

Harr and Coe testified that at each meeting, Harr would introduce Coe and Coe would then explain to the employees the principles of TIPS and FOE, described earlier. They would then review the written handout to employees that discuss wages, 401(k), and profit sharing, explaining the benefits, making clear that they were not "promising anything to the employees, stating that would be against the law."

Coe testified that he explained how the 401(K) plan functioned with employee contributions and without. He testified that he recalled Harr using an example of a long-term employee named Eunice to demonstrate how the company's retirement plan worked. Coe testified that he was asked, "How come union employees didn't get that" referring to the profit sharing program. Coe told employees that the Union wanted them to put money in the Union pension fund instead, during contract negotiations. Coe also answered employee questions and stated that employees had questions about job security and health care. Coe testified that he gave the opinion that the Company's health insurance package was better than the Union's plan. He noted that the company's plan covers more, but also costs much more. He gave employees written answers to questions that had been passed to management by the committee and urged employees to read them.

Harr's testimony about the three meetings is consistent with Coe's testimony. According to Harr, at one meeting an employee asked if the employees could have the Union pension and

a 401 (k) plan. Harr told the employee that there was only "one pie, not two pies" and that the Union had historically negotiated for a contribution to their pension fund. He offered his opinion that the employees would be better off without the Union.

a. The Meeting Held in Portuguese

Maria Fatima Rebelo translated at this meeting. She testified that she often translated into Portuguese and that during July and August, 2001, she translated at three or four meetings. Rebelo testified that she would translate from the front of the room and would give the exact translation after each short statement by the speaker. She testified that she would ask for clarification if she did not understand what the speaker was saying.

She testified that Harr and Coe discussed the benefits employees could have if the Union were decertified. She testified that they gave employees a packet of written material. In her pretrial affidavit, she stated: "These papers referred to profit sharing, 401(k) and health insurance. He said it was up to us if we vote the Union down, we could get profit sharing and 401 (k). He did not promise anything. He said if we keep the Union in, we would not have profit sharing or 401(k) – Union people do not have that. He said if we vote the Union out we could have profit sharing and 401(k), but it was all up to us. A person asked if we keep the Union, could we get 401(k) and profit sharing. Steve (Harr) said no – because that was the Company policy without the Union." Her testimony is consistent with the quoted portion of her affidavit. Rebelo testified that Harr made it clear that he did not promise anything, that he was relying on the facts. She also testified that when Harr said it was up to the employees, he was referring to the (decertification) vote and that the employees could have better benefits without the Union. It is significant that Rebelo believes she heard what her testimony and affidavit indicates as she was the translator for the rest of the employees in attendance. What she heard is what they heard.

Employee Hilda Martinez attended this meeting. She remembered Coe talking about the profit sharing and 401(K) plans and that he said they were benefits they could only get through the Company and not the Union. She testified that Harr told them that if the Union left, the employees could select a spokesperson to speak on their behalf with management.

b. The Meeting Held in Spanish.

Denys Camacho, Carmen Sanchez and Claudio Camacho all attended the meeting that was conducted in Spanish. Olga Centeno translated at this meeting. The testimony of these witnesses confirms that meeting was conducted in a manner similar to the meeting held in Portuguese and covered the same material.

Denys Camacho testified that Coe spoke about the health plan offered by Respondent and stated that while the premium would be more expensive, Respondent would help offset the cost by giving employees a raise. Mrs. Camacho also testified that, according to Harr, employees would begin to receive assistance for health care costs "as soon as we didn't have a union." According to her, Harr said that they would begin to participate in the profit sharing plan "as soon as we didn't have a union." Harr and Coe deny making these statements and I credit their denial, Denys Camacho is the only witness to make these allegations and I do not find her credible.

Denys Camacho also testified that Harr was asked if the employees could have the 401(k) with the Union. According to her, Harr answered, "No, because the union is a business." This could be fairly accurate. Coe and Harr indicated they told employees the Union historically

bargained only for its own pension plan. Like a business, they would have an interest in the solvency of his plan. Claudio Camacho testified in a similar vein to his wife.

Carmen Sanchez testified that she said she relayed Camacho's question to Harr, and he answered simply, "no".

Coe testified that the question posed was whether the employees could have both the Union pension plan and the 401(k) plan offered by the company. Coe explained that when a Union wants contributions to its own pension plan, the Company is not going to offer the 401(k) and profit sharing plans, as it is unwilling to make contributions to both types of plans. He denied that either he or Harr ever stated that the unionized employees could not have the 401 (k) or profit sharing plans. Evidently he did not make himself clear because virtually every non-management witness in this proceeding heard him to say that these benefits were only available to non-union employees.

Following this meeting, Harr went outside to smoke. He encountered the two Camacho's and had a conversation with them. According to Claudio, Harr asked them how old they were and they told him 26. Harr then stated they were very young and both would have a lot of opportunities with the benefits the Company offered. The following exchange then took place.

Q. "What else did he (Harr) say?"

A: "He asked me what my opinion was about what he had said at the conference, whether it was true or false."

Q. "What was he referring to?"

A: "What they were offering at the meeting."

Q.: "And what did you say?"

A: "I told him I didn't know because I was not 100% sure of what they were offering."

Q: "Well, let me ask this. Did you know what they were offering you at the meeting?"

A: "Yes."

Q: "So why did you tell Mr. Harr that you didn't know?"

A: "Because he never said he was going to promise anything."

Q: "Did he say anything else to you?"

A: "No."[4]

Contrary to the arguments of General Counsel I do not find this casual conversation unlawful. Even accepting Camacho's version of the conversation, Harr was only

[4] Camacho left the stand shortly after this testimony and returned the next day to complete it. He attempted on the second day to change the meaning of what is quoted above. I do not credit this attempted change in testimony as it appears to have been coached by someone.

asking if Camacho believed Coe's presentation of facts, not whether he was supporting the decertification effort or not.

Harr admitted the conversation took place but only recalled asking them if the meeting had been informative.

c. The Meeting Held in English.

Dorothy Depaolo and Mary Holmes were English-speaking members of the committee. They both attended the English speaking meetings. In her affidavit, Depaolo avers that Coe and Harr told the attendees the facts about profit sharing and 401 (k) and answered questions. She added that at no time did Respondent promise anything and that she told steward Guerra that he should tell the Union it was not true that Respondent was making promises.[5]

According to Depaolo, Coe and Harr compared what employees at the UniFirst non-union companies were making and showed them the difference. She averred that the two men said that if the employees were non-union, they would automatically be in the profit sharing program and have the option to be in the 401(k) plan. Holmes stated in her affidavit that at this meeting, Harr had some papers that showed what "we could get with profit sharing and 401(k)." According to Holmes, Harr said, "This is what you could get without the Union." He added, "We could not get profit sharing or 401(k) with the Union because it was not offered." She stated he also said that the medical insurance offered by Respondent was a better plan, but was not available with the Union.

C. Events leading to Respondent's withdrawal of recognition of the Union following the employee meetings.

On August 8, the Respondent received notice that the Union had filed unfair labor practice charges blocking the election and causing its postponement from the scheduled date of August 16. Harr notified employees of these occurrences.

Around August 16, the Union distributed a flyer announcing a meeting on August 17 to nominate new shop stewards. The flyer also had a cartoon, depicting management asking an employee to sit down for negotiations in an electric chair. Harr testified that Dorothy Depaolo was angry about the flyer and the fact that the election was blocked. Harr testified that she had never been a supporter of the Union because she lost her seniority in a corporate takeover. According to Harr, the Union meeting was held on August 17 and he heard heated exchanges coming from those in attendance. Soon after the meeting, DePaolo began to circulate a petition demanding an election. In her affidavit, Depaolo stated that she circulated the petition to get Respondent to hold its own "vote." She also stated she was angry about the steward nominations and because the Union was bringing in organizers from North Carolina to meet with employees. Depaolo gave the signed petition to Breault who got it to Counsel.

Harr testified that he received a copy of the petition from Centeno on about August 20, and faxed a copy of it to Coe and Kraft. The petition was signed by forty of Respondent's employees.

On August 14, Attorney Kraft, agreed in a letter to have a bargaining session on August

[5] For a few days prior to this meeting, the Union had been distributing flyers accusing Respondent of making promises to employees with regard to wages and benefits.

28. Kraft testified that on August 20, while he was in Texas on a business matter, he received a voice mail message from Teresa Sullivan, the assistant to Anne Sills, Counsel for the Union, stating that Sills would be on vacation on August 28. Kraft testified that he immediately left instructions for his assistant to schedule a meeting for him concerning another matter on August 28. Late the next day, Kraft received a second voice mail message dated August 21, from Sullivan, informing him he should disregard the message of the previous day as another attorney, Don Siegel, would be covering for Sills while she was on vacation. Kraft had a conversation with Siegel on August 28 during which he explained why he had to cancel the August 28 meeting. Kraft then sent a follow up letter on August 24.

Coe, Harr and Kraft met at the Springfield facility on August 23 or 24 to discuss the petition generated by Depaolo. At this meeting a decision was made to conduct an employee poll in lieu of the postponed election. On August 27, Kraft sent a letter to Munzert announcing that Respondent would conduct a poll on August 31. On August 28, Kraft received a letter from Siegel demanding that the poll be cancelled.

On August 28, Coe held a meeting for all employees to explain the procedure for Respondent's poll and to encourage the employees to vote in the poll. Coe testified that they reviewed TIPS and FOE and that he was interrupted by an employee who wanted to know what they (the employees) would get for wages and benefits if they voted the Union out. Coe testified that he told the employee that he could only tell him the facts and give his opinion. Coe told the employee that, in his opinion, they would be better off without the Union.

According to Claudio Camacho, Harr spoke and told the employees that if they believed what Respondent was offering was better than what the Union was offering, they should vote for Respondent and vice versa. He also testified that Harr told the group that the benefits Respondent was offering were better than anything that the Union would be able to offer them.

Both Coe and Harr deny that Harr made any statements about Respondent's benefits being better than what the Union could obtain for the employees. I credit their denials over the testimony of Camacho.

On August 31, Respondent held a poll in the cafeteria of the Springfield plant. A minister counted the ballots. The tally was 37 for Respondent and 21 for the Union. As a result of the tally, Kraft sent a letter to Siegel dated September 4, informing him that Respondent was withdrawing recognition from the Union based on the results of the poll.

D. The Union makes information requests that Respondent only partially responds to and then refuses to further comply.

On July 16 and August 17, the Union made written information requests that would have relevance to the upcoming negotiations for a new collective bargaining agreement, the decertification issue or both. Respondent provided some of this information prior to the poll, but not all of it. Respondent makes no contention that the information requested is not necessary and relevant to the Union's role as exclusive representative of the Unit employees. It refuses to provide it because it withdrew recognition.

E. Conclusions about whether the Respondent has committed unfair labor practices.

1. Did Respondent Violate Section 8(a)(1) of the Act by Its Involvement with the Committee?

I find that this issue must be resolved in favor of the Respondent based on the credited evidence. Respondent did not do anything with respect to the filing of the decertification petition. After its filing Harr was approached by a group of employees who had questions relating to what would happen if the Union were decertified. These employees asked to meet with him. He did meet and an informal committee came into existence. There is no showing that Harr formed the committee. He again met with the committee a few days later. In attendance at this meeting were two UniTech shop stewards, Claudio Camacho and Jeanette Boily. The two stewards were summoned to the meeting by a member of management. The fact is the two stewards, through Camacho, had requested they be allowed to attend. As noted earlier, there was no showing in the record as to who called the meetings. I will not find a violation of the Act in this regard.

Respondent, through Harr, suggested that the committee gather employee questions and submit them in writing. As the committee had its genesis in employees seeking information, I believe it would be obvious that this was a legitimate goal of the committee. Simply directing that questions be gathered in writing so they could be answered does not rise to the level of an unlawful direction of the committee's activities. Harr also suggested they tell UniTech employees of the committee's existence as all members of the committee at its inception were UniFirst employees. The committee was free to follow this suggestion or ignore it. Two witnesses, Mary Holmes and Claudio Camacho, testified that in the second meeting of the Committee with Harr he asked those present to sign a document which said the undersigned were organized to help the employees understand what could be offered them in a possible change over. Unless that document is what is in evidence as Respondent's Exhibit 4, there was no other document introduced that could be it. There was no evidence tying this exhibit to Harr. Respondent's Exhibit 4 does not do anything but encourage those reading it to submit questions to the committee if they have any questions. Harr denied asking employees to sign any document or petition. I do not believe the record is sufficiently developed to make a finding that he did. I do not find that Respondent violated the Act based on the testimony of Camacho and Holmes in this regard.

I have previously in this decision discredited testimony that Harr stated that the committee would take the place of the Union if it were decertified, or that the committee would serve as the employees' representative if the Union was voted out. Thus, I find no violation of the Act in this regard.

2. Did Respondent Violate Section 8(a)(1) of the Act by the Actions of Harr and Coe at the August Employee Meetings?

Section 8(c) of the Act permits an employer to make truthful statements concerning benefits available to its represented and unrepresentative employees. For example, in *TCI Cablevision,* 329 NLRB 700 (1999), employees were told that the union had not succeeded in negotiating a 401(k) plan, a benefit the employer's unrepresentative employees received. In that case, the Board found that the employer lawfully "informed employees of a `historical fact'" (that its unrepresented employees received a 401(k) benefit). The Board, however, stated that "[critically], the Employer did not tell employees that the only way to receive the 401(k) plan was to oust the Union," and that the employer "never said it would never agree with the Union to have such a plan."

An employer also has the right to compare wages and benefits at its non-union and unionized facilities. *Langdale Forest Products Co.,* 335 NLRB No. 51, slip op. at 1 (2000), citing *TCI Cablevision,* supra and *Viacom Cablevision,* 267 NLRB 1141 (1983). In addition, an employer can state its opinion, based upon such a comparison, that employees would be better

off without a union. *Langdale Forest Products, supra.* Absent promises or threats, the Board normally treats such comments as protected by Section 8(c).

However, the Board has long held that conditioning improved benefits on employees giving up union representation violates Section 8(a)(1) of the Act. In *Bridgestone/Firestone, Inc.*, 332 NLRB No. 56, slip op. at 2 (2000), the Board found that the employer made unlawful promises of benefits in exchange for employee votes against union representation. It is also unlawful for an employer to state that employees can only obtain particular benefits by decertifying a union. For example, in *Selkirk Metalbestos,* 321 NLRB 44, 51 (1996), the Board upheld the administrative law judge, who found that promises of benefits immediately before an election tended to determine employees' union desires were unlawful and "particularly egregious when, as here, the employer advised ... employees that the new benefit was available only to its unrepresented employees."

Based on these cases, I find that Respondent exceeded the permissible limits of Section 8(c) and made unlawful statements and promises of benefits to employees. During the meetings of August 2 and 3, based on the credited testimony, Respondent told employees they could only received profit sharing and 401(k) benefits without the Union. Based on the credited testimony, Respondent promised that these benefits would be made available to employees if the Union were decertified. As explained in *Selkirk Metalbestos,* it is unlawful to tell employees that particular benefits are available only to non-union employees. This case is also distinguishable from *TCI Cablevision,* where the employer did no more than tell employees that the union had been unable to achieve a 401(k) benefit in negotiations, here Respondent told employees that the only way to receive profit sharing and a 401(k) plan was to vote out the Union.

Rebelo, Holmes, and Depaolo, all witnesses who favored decertification, testified at trial and by affidavit that these statements were made and supplemented by the written material handed out at the employee meetings. In addition, all of the Union witnesses testified to the same type of comments. The testimony of almost all witnesses except Coe and Harr establish that in the meetings of August 2 and 3, Respondent made it clear that the *only* way the employees could have profit sharing and a 401(k) plan was to decertify the Union. I find that, based on the case law, this statement was unlawful and violated Section 8(a)(1) of the Act. Respondent's repeated disclaimers that it could not promise anything are belied with respect to 401(k) and profit sharing offers.

I find that the other material presented at the August 2 and 3 meetings are within the permissible limits of Section 8(c). *Viacom Cablevision,* 267 NLRB at 1141-1142, supra.

3. Did Respondent Violate the Act by Canceling the August 28 Meeting?

I accept as true Counsel Kraft's explanation of the reason for the cancellation of the August 28 meeting. Consequently, I find the cancellation of this meeting was the result of a miscommunication between the parties and nothing more. I do not find that the cancellation in any way violated the act. The fact that Kraft's letter to Union Counsel Siegel does not note that the Respondent was considering holding an employee poll I find insignificant. The letter may well have been drafted prior to the decision to have a poll.

4. Did Respondent Violate Section 8(a)(1) of the Act by Polling Unit Employees in an Atmosphere of Unremedied Unfair Labor Practices and Did It Violate Section 8(a)(5) by Thereafter Withdrawing Recognition of the Union and Refusing to Supply Requested Information and by Refusing to Bargain?

Under *Strukness Construction,* 165 NLRB 1062 (1965), an employer is permitted to poll employees about their union sentiments only if: (1) the poll's purpose is to determine the truth of a union's claim of majority status; (2) this purpose is communicated to the employees; (3) employer assurances against reprisal are given; (4) employees are polled by secret ballot; and (5) the employer has not engaged in unfair labor practices or otherwise created a coercive atmosphere. *Id* at 1063. This last criterion is limited to unfair labor practices that can be shown to have caused the loss of employee support for the union.

Here, Respondent's August 27 notice to employees satisfied the first four requirements set forth in *Strukness*. In addition, Respondent provided the Union with advance notice of the poll's time and place, as called for in *Texas Petrochemicals,* 296 NLRB 1057, 1063 (1989). Nevertheless, the poll was unlawful because it, and the petition which prompted it, were tainted by Respondents statements made in August that were not protected by Section 8(c) of the Act, which were causally related to the loss of employee support for the Union.

According to *Lee Lumber & Building Material Corp.,* 322 NLRB 175, 177 n. 16 334 (1996), and *RTP Corp.,* 334 NLRB No. 69, slip op. at 3 (2001), the relevant factors in determining a causal relationship between unfair labor practices and loss of employee support for a union include: (1) the length of time between the unfair labor practices and the withdrawal of recognition; (2) the nature of the violations, including the possibility of a lasting and detrimental effect on employees: (3) the tendency of the violations to cause employee disaffection with the union; and (4) the effect of the unlawful conduct on employee's morale, organizational activities, and union membership.

First, the unfair labor practices occurred within two weeks of the August 14 petition which was submitted by Depaolo. This petition, which a majority of employees signed, served as the basis on which Respondent conducted its poll two weeks later and subsequently withdrew recognition from the Union. In *RTP Corp,* supra, the Board found "close temporal proximity" where the unfair labor practice occurred two to six weeks prior to the petition on which the employer based its withdrawal of recognition. Second, Respondent's unlawful promises and statements regarding profit sharing and 401(k) improperly suggest to employees that they would be better off without the Union. See *Detroit Edison,* 310 NLRB 564, 566 (1993), where the Board held that the employer's unfair labor practices "conveyed to employees the notion that they would receive more ... without union representation. Such conduct improperly affects [the] bargaining relationship."

As to the final two factors, which address the effect of the employer's conduct on protected employee activity, this case is similar to *RTP Corp,* supra, where the Board found that an employer accusation that the union prevented a wage increase tended to alienate the employees from the union. See also *Bridgestone/Firestone,* supra at 332 NLRB No. 56, slip op. at 2, where the Board found that employer promises of enhanced benefits in the absence of the union tended to discourage union activity "because such promises send the unmistakable message that union representation is not only unnecessary, but that it is an obstacle as opposed to a means, to achieving higher wages and benefits."

Here it is fair to argue that Respondent's promises of improved benefits through profit sharing and 401(k) and that those benefits were only available without the Union, reasonably tended to cause employee dissatisfaction with the Union. In fact, it was not until Respondent committed its unfair labor practices that the Union lost majority support. In this regard, only 21 out of 67 unit members had signed the first anti-union petition. The August 14 petition was signed by 40 employees. It is reasonable to conclude that this increased employee dissatisfaction was directly tied to the unfair labor practices. I find these violations bear a causal

relationship to the loss of employee support for the Union and render the Respondent's poll unlawful.

Respondent also violated Section 8(a)(1) of the Act by polling employees while the decertification petition was still pending. In *Strukness,* supra at 1063, the Board stated that:

A poll taken while a petition for a Board election is pending does not, in our view, serve any legitimate interest of the employer that would not be better served by the forthcoming Board election. In accord with long-established Board policy, therefore, such polls will continue to be found to violate Section 8(a)(1) of the Act.

See also *Bruckner Nursing Home,* 262 NLRB 955, 957 (1982)(in an initial organizing situation, once notified of a valid petition, an employer must refrain from recognizing any rival unions) and by *RCA Del Caribe*, 262 NLRB 963, 966 (1982)(the mere filing of an election petition by an outside, challenging union neither requires nor permits an employer to withdraw from bargaining or from the execution of a contract with an incumbent union). *Strukness, Bruckner,* and *RCA Del Caribe,* stand for the proposition that, in the face of a valid election petition, an employer may not resort to self-help. The Board's recent decision in *Levitz,* 333 NLRB No. 105 (2001), is in accord with *Strukness* because, even though the Board in *Levitz* left to a later case the question of whether the current good-faith doubt standard for polling ought to be changed, it emphasized that Board-conducted elections remain the preferred way to resolve questions concerning employees' support for unions.

The Board applied this principle in *Heritage Hall, E.P.I.,* 333 NLRB No. 63 (2001). There the union had filed a petition for an election to be held on December 8, 1995. On December 7, the union filed blocking charges. Even though the election was cancelled, the Employer conducted what it termed a "mock election," which was alleged to be an unlawful employee poll. The Administrative Law Judge found the poll unlawful under *Strukness* because it had not been conducted in an atmosphere free of unfair labor practices or coercion. The Board stressed that under *Strukness,* the respondent was prohibited from lawfully conducting its own election while the union's petition was pending even if the respondent complied with the procedural safeguards set forth in that case. Like *Heritage Hall,* at the time of the poll an election was pending in this case. Accordingly, Respondent's poll was unlawful in this regard as well.

Having found the petition on which the poll was based tainted by Respondent's unfair labor practices and the poll unlawful and in violation of Section 8(a)(1), its subsequent reliance on the results of the poll to withdraw recognition, refuse to supply requested necessary and relevant information and refuse to bargain are similarly unlawful and in violation of Section 8(a)(1) and (5) of the Act..

Conclusions of Law

1. UniFirst Corporation is an employer within the meaning of Section (2)(6) and (7) of the Act.

2. Laundry Workers Union Local 66L, a/w Union of Needletrades, Industrial & Textile Employees, AFL-CIO, CLC is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees of Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production employees of Respondent described in a collective-bargaining agreement between Respondent and the Union, effective by its terms from October 5, 1998 through October 1, 2001.

4. At all material times, the Union has been the designated collective bargaining representative of the Unit and at all material times until August 27, the Union has been recognized as such by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is the 1998-2001 Contract.

5. Respondent has engaged in conduct in violation of Section 8(a)(1) by:

   a. On August 2 and 3, 2001, by Harr and Coe, stating to employees that Respondent's 401(k) plan and profit sharing plan were only available to employees if the Union were to be decertified and impliedly promising these plans would be made available if the Union were decertified.
   b. By polling its employees' union support in an atmosphere tainted by unremedied unfair labor practices and while a Board election was pending.

6. Respondent has engaged in conduct in violation of Section 8(a)(5) of the Act by:

   a. Refusing to provide relevant and necessary information requested by the Union on July 16, 2001 and August 17, 2001.
   b. Withdrawing recognition of the Union as the exclusive collective-bargaining representative of the Unit on September 4, 2001.
   c. Since September 4, 2001, refusing to meet and bargain with the Union as the exclusive collective bargaining representative of the Unit.

7. The unfair labor practices committed by Respondent are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

8. Respondent did not commit the other unfair labor practices alleged in the Complaint.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Respondent should be ordered to recognize and, upon request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the Unit and, if an understanding is reached, to embody the understanding in a signed agreement. Respondent should be ordered to furnish the Union with the information requested on July 16 and August 17, 2001. In addition, the Respondent will make whole all employees who suffered financial loss as a result of unilateral changes to be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as computed in *New Horizons for the Retarded,* 283 NLRB 1173 (1978). Finally, Respondent should be ordered to post an appropriate notice to employees.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[6]

ORDER

The Respondent, UniFirst, Indian Orchard, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

   a. Stating to employees that Respondent's 401(k) plan and profit sharing plan were only available to employees if the Union were to be decertified and impliedly promising these plans would be made available if the Union were decertified.
   b. By polling its employees' union support in an atmosphere tainted by unremedied unfair labor practices and while a Board election was pending.
   c. Refusing to provide relevant and necessary information requested by the Union on July 16, 2001 and August 17, 2001.
   d. Withdrawing recognition of the Union as the exclusive collective-bargaining representative of the Unit on September 4, 2001.
   e. Refusing to meet and bargain with the Union as the exclusive collective bargaining representative of the Unit.
   f. In any like or related manner interfering with, restraining or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

   a. Recognize and, upon request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the Unit and, if an understanding is reached, to embody the understanding in a signed agreement.
   b. The following employees of Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act: All production employees of Respondent described in a collective-bargaining agreement between Respondent and the Union, effective by its terms from October 5, 1998 through October 1, 2001.
   c. Furnish the Union with information requested by it on July 16 and August 17, 2001.
   d. Make whole the employees in the Unit, with interest, for any loss of earnings and other benefits they may have suffered by Respondent's unlawful refusal to apply the terms and conditions of employment set forth in the collective-bargaining agreement, which expired October 1, 2001, until such time as Respondent bargains in good faith to impasse or enters into a collective bargaining agreement, in the manner set forth in the remedy section of this decision.
   e. Preserve and, within 14 days of a request, or such additional time as the

[6] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

f. Within 14 days after service by the Region, post at its facility in Indian Orchard, Massachusetts copies of the attached notice marked "Appendix."[7] Copies of the notice, on forms provided by the Regional Director for Region 1 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 2, 2001.

g. Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 18, 2003

Wallace H. Nations
Administrative Law Judge

[7] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT state to employees that Respondent's 401(k) plan and profit sharing plan were only available to employees if the Union were to be decertified and impliedly promising these plans would be made available if the Union were decertified.

WE WILL NOT poll our employees' union support in an atmosphere tainted by unremedied unfair labor practices and while a Board election is pending.

WE WILL NOT refuse to provide relevant and necessary information requested by the Union on July 16, 2001 and August 17, 2001.

WE WILL NOT withdraw recognition of the Union as the exclusive collective-bargaining representative of the Unit.

WE WILL NOT refuse to meet and bargain with the Union as the exclusive collective bargaining representative of the Unit.

WE WILL NOT in any like or related manner interfere with, restrain or coerce employees in the exercise of rights guaranteed by Section 7 of the Act.

WE WILL recognize and, upon request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the Unit and, if an understanding is reached, embody the understanding in a signed agreement.

WE WILL furnish the Union with information requested by it on July 16 and August 17, 2001.

WE WILL make whole the employees in the Unit, with interest, for any loss of earnings and other benefits they may have suffered by Respondent's unlawful refusal to apply the terms and conditions of employment set forth in the collective-bargaining agreement, which expired October 1, 2001, until such time as Respondent bargains in good faith to impasse or enters into a collective bargaining agreement.

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under

the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

10 Causeway Street, Boston Federal Building, 6th Floor, Boston, MA 02222–1072

(617) 565-6700, Hours of Operation: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (617) 565-6701.